

Initiative No. 1850

January 4, 2022

Limit the Governor's Emergency Powers Act

AN ACT Relating to orders and rules during a state of emergency; amending RCW 43.06.210, 43.06.220, 4.12.020, 34.05.350, 43.70.130, and 70.05.070; creating new sections; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

INTENT SECTION

NEW SECTION. **Sec. 1.** The Washington State Constitution declares that all political power is inherent in the people, and governments derive their just powers from the consent of the governed and are established to protect and maintain individual rights. The Constitution further declares that no person shall be deprived of life, liberty, or property, without due process of law, and the right of petition and of the people peaceably to assemble for the common good shall never be abridged. Therefore, this initiative intends to protect the rights of the people by limiting the governor's power and scope of authority in the event of an emergency by ensuring that declarations of emergency are subject to reasonable limits and by requiring legislative action to extend any resulting executive proclamation.

The majority of people in our state support applying reasonable limits to the governor's extraordinary powers and authority during emergencies.

This initiative will be considered by the 2022 legislature. If the legislature does not pass this initiative into law, by rejecting it or taking no action on it, Washington voters will vote on it on November 8, 2022.

LIMITING THE GOVERNOR'S EMERGENCY POWERS

Sec. 2. RCW 43.06.210 and 2013 c 21 s 1 are each amended to read as follows:

(1) The proclamation of a state of emergency and other proclamations or orders issued by the governor pursuant to RCW 43.06.010, and 43.06.200 through 43.06.270 as now or hereafter amended shall be in writing and shall be signed by the governor and shall then be filed with the secretary of state. A proclamation of a state of emergency is effective upon the governor's signature.

(2) A proclamation of a state of emergency must identify the area of the state in which the emergency exists. Such area may not exceed a single county in any single proclamation. The governor may issue multiple proclamations intended to address simultaneous emergencies in multiple counties, even where those simultaneous emergencies arise from the same facts constituting an emergency.

(3) A proclamation of a state of emergency must identify the specific facts giving rise to the emergency in the area covered by that proclamation and the specific facts under which order will be determined to have been restored in the area affected. Facts giving rise to an emergency may not include circumstances addressed in existing statutes or regulations.

(4) The governor shall give as much public notice as practical through the news media of the issuance of proclamations or orders pursuant to RCW 43.06.010, and 43.06.200 through 43.06.270 as now or hereafter amended.

(5) The state of emergency shall cease to exist (~~upon the~~) the earlier of:

(a) The issuance of a proclamation of the governor declaring its termination: PROVIDED, That the governor must terminate said state of emergency proclamation when order has been restored in the area affected; or

(b) 30 days after a proclamation of a state of emergency is signed by the governor unless extended by the legislature through concurrent resolution. If the legislature is not in session, the state of emergency may be extended in writing by the leadership of the senate and the house of representatives until the legislature can extend the state of emergency by concurrent resolution. No individual extension may exceed 30 days. The legislature may pass subsequent resolutions of extension. For purposes of this section, "leadership of the senate and the house of representatives" means the majority and minority leaders of the senate and the speaker and the minority leader of the house of representatives.

(6) Any person may seek judicial review in the superior court of the county subject to an emergency proclamation to determine whether the facts

identified in a proclamation as constituting an emergency constitute a circumstance addressed in existing law. Such judicial determination constitutes a determination that the proclamation of emergency is void.

Sec. 3. RCW 43.06.220 and 2019 c 472 s 2 are each amended to read as follows:

(1) The governor after proclaiming a state of emergency and prior to terminating such, may, in the area described by the proclamation issue an order prohibiting:

(a) Any person being on the public streets, or in the public parks, or at any other public place during the hours declared by the governor to be a period of curfew;

(b) Any number of persons, as designated by the governor, from assembling or gathering on the public streets, parks, or other open areas of this state, either public or private;

(c) The manufacture, transfer, use, possession or transportation of a molotov cocktail or any other device, instrument or object designed to explode or produce uncontained combustion;

(d) The transporting, possessing or using of gasoline, kerosene, or combustible, flammable, or explosive liquids or materials in a glass or uncapped container of any kind except in connection with the normal operation of motor vehicles, normal home use or legitimate commercial use;

(e) The sale, purchase or dispensing of alcoholic beverages;

(f) The sale, purchase or dispensing of other commodities or goods, as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace;

(g) The use of certain streets, highways or public ways by the public; and

(h) Such other activities as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace.

(2) The governor after proclaiming a state of emergency and prior to terminating such may, in the area described by the proclamation, issue an order or orders concerning waiver or suspension of statutory obligations or limitations in the following areas:

(a) Liability for participation in interlocal agreements;

(b) Inspection fees owed to the department of labor and industries;

(c) Application of the family emergency assistance program;

(d) Regulations, tariffs, and notice requirements under the jurisdiction

of the utilities and transportation commission;

(e) Application of tax due dates and penalties relating to collection of taxes;

(f) Permits for industrial, business, or medical uses of alcohol; and

(g) Such other statutory and regulatory obligations or limitations prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency if strict compliance with the provision of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency, unless (i) authority to waive or suspend a specific statutory or regulatory obligation or limitation has been expressly granted to another statewide elected official, (ii) the waiver or suspension would conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, or (iii) the waiver or suspension would conflict with the rights, under the First Amendment, of freedom of speech or of the people to peaceably assemble. The governor shall give as much notice as practical to legislative leadership and impacted local governments when issuing orders under this subsection (2)(g).

(3) ~~((In imposing the restrictions provided for by RCW 43.06.010, and 43.06.200 through 43.06.270, the governor may impose them for such times, upon such conditions, with such exceptions and in such areas of this state he or she from time to time deems necessary.))~~ Any order issued under subsections (1) and (2)(g) of this section must be narrowly tailored, using the least restrictive means to accomplish a compelling government interest to protect the public.

(4) No order or orders ~~((concerning waiver or suspension of statutory obligations or limitations))~~ under ~~((subsection (2) of))~~ this section may continue for longer than ~~((thirty))~~ 30 days unless extended or modified by the legislature through concurrent resolution. If the legislature is not in session, the ~~((waiver or suspension of statutory obligations or limitations))~~ order or orders may be extended in writing by the leadership of the senate and the house of representatives for up to 30 days, until the legislature can extend the waiver or suspension by concurrent resolution. For purposes of this section, "leadership of the senate and the house of representatives" means the majority and minority leaders of the senate and the speaker and the minority leader of the house of representatives.

(5) Any person willfully violating any provision of an order issued by the governor under this section is guilty of a gross misdemeanor.

Sec. 4. RCW 4.12.020 and 2001 c 45 s s are each amended to read as follows:

Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose:

- (1) For the recovery of a penalty or forfeiture imposed by statute;
- (2) Against a public officer, or person specially appointed to execute his or her duties, for an act done by him or her in virtue of his or her office, or against a person who, by his or her command or in his or her aid, shall do anything touching the duties of such officer;
- (3) For the recovery of damages for injuries to the person or for injury to personal property, the plaintiff shall have the option of suing either in the county in which the cause of action or some part thereof arose, or in the county in which the defendant resides, or if there be more than one defendant, where some one of the defendants resides, at the time of the commencement of the action; and
- (4) For judicial review of an emergency proclamation under RCW 43.06.210.

Sec. 5. RCW 34.05.350 and 2011 1st sp.s. c 2 s 1 are each amended to read as follows:

- (1) If an agency for good cause finds:
 - (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest;
 - (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; or
 - (c) In order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency, the agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

- (2) An emergency rule adopted under this section takes effect upon filing with the code reviser, unless a later date is specified in the order of

adoption, and may not remain in effect for longer than one hundred twenty days after filing. An emergency rule adopted during a state of emergency proclaimed under RCW 43.06.210 may not remain in effect for longer than 30 days after the state of emergency ceases to exist. Identical or substantially similar emergency rules may not be adopted in sequence unless conditions have changed or the agency has filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. This section does not relieve any agency from compliance with any law requiring that its permanent rules be approved by designated persons or bodies before they become effective.

(3) Within seven days after the rule is adopted, any person may petition the governor requesting the immediate repeal of a rule adopted on an emergency basis by any department listed in RCW 43.17.010. Within seven days after submission of the petition, the governor shall either deny the petition in writing, stating his or her reasons for the denial, or order the immediate repeal of the rule. In ruling on the petition, the governor shall consider only whether the conditions in subsection (1) of this section were met such that adoption of the rule on an emergency basis was necessary. If the governor orders the repeal of the emergency rule, any sanction imposed based on that rule is void. This subsection shall not be construed to prohibit adoption of any rule as a permanent rule.

(4) No more than three days after an emergency rule is adopted during a state of emergency proclaimed under RCW 43.06.210, the agency shall provide an opportunity for oral comment to be received by the agency in a rule-making hearing that follows RCW 34.05.325 (4) and (5). The agency must provide notice of the hearing as described in RCW 34.05.320(1).

Sec. 6. RCW 43.70.130 and 1990 c 132 s 2 are each amended to read as follows:

(1) The secretary of health shall:

~~((1))~~ (a) Exercise all the powers and perform all the duties prescribed by law with respect to public health and vital statistics;

~~((2))~~ (b) Investigate and study factors relating to the preservation, promotion, and improvement of the health of the people, the causes of morbidity and mortality, and the effects of the environment and other conditions upon the public health, and report the findings to the state board of health for such action as the board determines is necessary;

~~((3))~~ (c) Strictly enforce all laws for the protection of the public health and the improvement of sanitary conditions in the state, and all

rules, regulations, and orders of the state board of health;

((4)) (d) Enforce the public health laws of the state and the rules and regulations promulgated by the department or the board of health in local matters, when in its opinion an emergency exists and the local board of health has failed to act with sufficient promptness or efficiency, or is unable for reasons beyond its control to act, or when no local board has been established, and all expenses so incurred shall be paid upon demand of the secretary of the department of health by the local health department for which such services are rendered, out of moneys accruing to the credit of the municipality or the local health department in the current expense fund of the county;

((5)) (e) Investigate outbreaks and epidemics of disease that may occur and advise local health officers as to measures to be taken to prevent and control the same;

((6)) (f) Exercise general supervision over the work of all local health departments and establish uniform reporting systems by local health officers to the state department of health;

((7)) (g) Have the same authority as local health officers, except that the secretary shall not exercise such authority unless the local health officer ~~((fails or))~~ is unable to do so, or when in ~~((an))~~ a proclaimed state of emergency the safety of the public health demands it, or by agreement with the local health officer or local board of health;

((8)) (h) Cause to be made from time to time, personal health and sanitation inspections at state owned or contracted institutions and facilities to determine compliance with sanitary and health care standards as adopted by the department, and require the governing authorities thereof to take such action as will conserve the health of all persons connected therewith, and report the findings to the governor;

((9)) (i) Review and approve plans for public water system design, engineering, operation, maintenance, financing, and emergency response, as required under state board of health rules;

((10)) (j) Take such measures as the secretary deems necessary in order to promote the public health, to establish or participate in the establishment of health educational or training activities, and to provide funds for and to authorize the attendance and participation in such activities of employees of the state or local health departments and other individuals engaged in programs related to or part of the public health programs of the local health departments or the state department of health. The secretary is also authorized to accept any funds from the federal

government or any public or private agency made available for health education training purposes and to conform with such requirements as are necessary in order to receive such funds; and

~~((11))~~ (k) Establish and maintain laboratory facilities and services as are necessary to carry out the responsibilities of the department.

(2) (a) Any emergency order or policy issued by the secretary in response to a proclaimed state of emergency must identify the area of the state in which the emergency exists. Such area may not exceed a single county in any single proclamation. The secretary may issue multiple proclamations intended to address simultaneous emergencies in multiple counties, even where those simultaneous emergencies arise from the same facts constituting an emergency.

(b) No order or policy issued under this subsection (2) may continue for longer than 30 days unless extended or modified by the legislature through concurrent resolution. If the legislature is not in session, the order or policy may be extended or modified in writing by the majority and minority leaders of the senate and the speaker and the minority leader of the house of representatives for up to 30 days, until the legislature can extend the order or policy by concurrent resolution.

(c) Any order or policy issued under this subsection (2) must be narrowly tailored, using the least restrictive means to accomplish a compelling government interest to protect the public.

Sec. 7. RCW 70.05.070 and 2020 c 20 s 1066 are each amended to read as follows:

(1) The local health officer, acting under the direction of the local board of health or under direction of the administrative officer appointed under RCW 70.05.040 or 70.05.035, if any, shall:

~~((1))~~ (a) Enforce the public health statutes of the state, rules of the state board of health and the secretary of health, and all local health rules, regulations and ordinances within his or her jurisdiction including imposition of penalties authorized under RCW 70A.125.030 and 70A.105.120, the confidentiality provisions in RCW 70.02.220 and rules adopted to implement those provisions, and filing of actions authorized by RCW 43.70.190;

~~((2))~~ (b) Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;

~~((3))~~ (c) Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his or her jurisdiction;

~~((4))~~ (d) Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of

health within his or her jurisdiction;

~~((5))~~ (e) Prevent, control or abate nuisances which are detrimental to the public health;

~~((6))~~ (f) Attend all conferences called by the secretary of health or his or her authorized representative;

~~((7))~~ (g) Collect such fees as are established by the state board of health or the local board of health for the issuance or renewal of licenses or permits or such other fees as may be authorized by law or by the rules of the state board of health;

~~((8))~~ (h) Inspect, as necessary, expansion or modification of existing public water systems, and the construction of new public water systems, to assure that the expansion, modification, or construction conforms to system design and plans;

~~((9))~~ (i) Take such measures as he or she deems necessary in order to promote the public health, to participate in the establishment of health educational or training activities, and to authorize the attendance of employees of the local health department or individuals engaged in community health programs related to or part of the programs of the local health department.

(2) (a) Any emergency order issued by a local health officer in response to a proclaimed state of emergency must be narrowly tailored, using the least restrictive means to accomplish a compelling government interest to protect the public.

(b) An order issued under this subsection (2) may not continue for longer than 30 days unless extended or modified by the legislature through concurrent resolution. If the legislature is not in session, the order may be extended or modified in writing by the majority and minority leaders of the senate and the speaker and the minority leader of the house of representatives for up to 30 days, until the legislature can extend the order by concurrent resolution.

CONSTRUCTION CLAUSE

NEW SECTION. **Sec. 8.** The provisions of this act are to be liberally construed to effectuate the policies, purposes, and intent of this act.

SEVERABILITY CLAUSE

NEW SECTION. **Sec. 9.** If any provision of this act or its application to

any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

TITLE OF ACT

NEW SECTION. **Sec. 10.** This act is known and may be cited as the Limit the Governor's Emergency Powers Act.

--- END ---